

## CONTRACT OF SALE

THIS CONTRACT OF SALE (the "Agreement") is made and entered into as of the Effective Date (hereinafter defined) by and between the CITY OF FRISCO ("Purchaser") and HILLCREST 306 PARTNERS, L.P., a Texas limited partnership ("Seller").

For and in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller hereby agree as follows:

1. Purchase and Sale. Upon and subject to the terms of this Agreement, Seller shall sell to Purchaser and Purchaser shall purchase from Seller a tract of land situated in the City of Frisco (the "City"), Collin County (the "County") containing 6.104 acres of land (265,893 square feet), Texas, described on Exhibit A attached hereto and made a part hereof, together with all and singular the rights and appurtenances pertaining thereto including any right, title and interest of Seller in and to adjacent roads, alleys or rights-of-way, strips or gores of land adjoining the land and abutting properties and rights of ingress or egress and any and all improvements situated on the land, including but not limited to any buildings, structures, fixtures and other improvements of every kind and nature in, on, under or about the land (such land, rights, appurtenances and improvements being herein referred to as the "Property").

2. Purchase Price. The consideration (the "Purchase Price") for the sale and conveyance of the Property shall be THREE HUNDRED NINETY SIX THOUSAND SEVEN HUNDRED SIXTY AND NO/100THS DOLLARS (\$396,760.00), or \$65,000.00 per acre as determined by the Survey to be completed pursuant to paragraph 3 herein, subject to the prorations and any adjustment provided for herein, payable in cash at Closing.

3. Survey and Title Policy.

(a) Within twenty (20) days after the Effective Date, Seller shall deliver or cause to be delivered the following items to Purchaser, at Seller's sole cost and expense:

1. a Commitment for Title Insurance issued by Republic Title of Texas, Inc., 2626 Howell, 10<sup>th</sup> Floor, Dallas, Texas 75204, Fax No. 214-855-8898, Attention: Ms. Diana Lansing (the "Title Company"), together with true and legible copies of all easements, restrictions and other items referred to as exceptions in the Commitment for Title Insurance (the "Commitment");

2. a current survey (the "Survey") of the Property made on the ground by a registered, professional land surveyor approved by Purchaser and the Title Company. The Survey shall (A) contain a metes and bounds description of the Property; (B) locate and show dimensions of all existing easements (setting forth book and page number) alleys, streets, roads and rights-of-way; (C) show any encroachments on or protrusions from the Property; (D) show all existing improvements; (E) show any portion of the Property within a flood plain; and (F) contain the surveyor's certification in form reasonably acceptable to Purchaser. The field notes prepared by the surveyor shall control over any conflicts or inconsistencies with Exhibit A and shall be attached to the Deed to be delivered at Closing as the legal description of the Property; and

3. Copies of environmental site assessments and soils tests relating to the Property and ordered to be conducted by Seller.

(b) Any items constituting an encumbrance upon or adversely affecting title to the Property as reflected by the Commitment, or the Survey shall constitute an exception to title. Within fifteen (15) days after receipt of the latter to be received by Purchaser of the Commitment, and the Survey, Purchaser shall notify Seller in writing of its objection to any such exceptions to title or disapproval of the Survey. If Purchaser gives timely written notice of its objections, Seller shall have the opportunity, but not the obligation, for ten (10) days after receipt of Purchaser's objection notice ("Seller's Cure Period") during which to cure such objections. Seller will utilize reasonable diligence to cure any errors in the Commitment or Survey, but Seller shall have no obligation to expend any money or institute any litigation in pursuing such efforts. In the event that prior to the end of Seller's Cure Period, Seller shall have failed to cure such objections to Purchaser's satisfaction or undertaken in writing to do so prior to Closing, Purchaser may, at its option, either (i)

terminate this Agreement by written notice to Seller not later than (A) five (5) days after the expiration of Seller's Cure Period, whereupon the Title Company shall return the Earnest Money (hereinafter defined) to Purchaser, and neither Purchaser nor Seller shall have any further liability or obligation hereunder, except such liabilities and obligations which expressly survive termination of this Agreement, or (ii) waive the unsatisfied objection (which shall thereupon become a Permitted Encumbrance) and proceed to Closing. Purchaser's failure to terminate the Agreement within the time hereinabove provided shall constitute its election to waive the unsatisfied objection and proceed to Closing. Any exceptions to title not objected to by Purchaser in the manner and within the time period specified in this Section 3 shall be deemed accepted by Purchaser. The phrase "Permitted Encumbrances" shall mean those exceptions to title set forth in the Commitment and/or reflected on the Survey and which have been accepted or deemed accepted by Purchaser.

(c) At the Closing, Seller shall provide Purchaser, except as otherwise provided in subpart (i) below, at Seller's sole cost and expense, with an Owner's Title Policy (the "Title Policy") dated the date of Closing, in the amount of the Purchase Price and insuring title to the Property to be in Purchaser in fee simple subject to no exceptions other than Permitted Encumbrances. The Title Policy shall be on the standard form in use in the State of Texas; provided, however, that (i) at Purchaser's option and expense, the standard exception pertaining to area and boundaries may be deleted except for shortages in area; (ii) the exception relating to restrictive covenants shall be deleted except for those included within Permitted Encumbrances; (iii) the exception relating to standby fees and taxes shall except only standby fees and taxes for the year of Closing and subsequent years and assessments for prior years due to changes in land usage or ownership; and (iv) there shall be no exception for "rights of parties in possession" or "visible and apparent easements."

(d) The Survey shall be at Seller's expense.

4. Earnest Money. Upon delivery to the Title Company of a fully executed copy of this Agreement, Purchaser shall deposit with the Title Company Twenty-Five Thousand Dollars (\$25,000.00) as earnest money (the "Earnest Money"). If Purchaser does not timely deliver the Earnest Money, or if the Title Company is not immediately able to obtain good funds in respect of the Earnest Money, Seller may, at its option, terminate this Agreement and neither party shall have any further right or obligation hereunder. The Title Company shall invest the Earnest Money in an interest bearing account designated by Purchaser and reasonably acceptable to Seller. The Earnest Money shall include all interest thereon. In the event this Agreement is closed, the Earnest Money shall be applied in payment of the Purchase Price at the Closing. In the event this Agreement is not closed, the Earnest Money shall be disbursed in accordance with the provisions of this Agreement.

5. Independent Contract Consideration. Notwithstanding any other provision of this Agreement to the contrary, in the event this Agreement is terminated by either party prior to Closing pursuant to any right to do so in this Agreement, or, if not so terminated, at the Closing, One Hundred Dollars (\$100.00) ("Independent Contract Consideration") of the Earnest Money shall be paid to Seller, which amount the parties bargained for and agreed to as consideration for Purchaser's exclusive right to inspect and purchase the Property pursuant to this Agreement and for Seller's execution, delivery and performance of this Agreement. The Independent Contract Consideration is in addition to and independent of any other consideration or payment provided in this Agreement, is nonrefundable, and it is fully earned and shall be retained by Seller notwithstanding any other provision of this Agreement, provided, the Independent Contract Consideration shall be applied as a credit to the Purchase Price at Closing.

6. Seller's Representations and Warranties.

- (a) Seller represents and warrants to Purchaser that:
- (i) Seller has, without notice to or consent or joinder of any other person or entity, the full right, power and authority to enter into and perform this Agreement, including full right, power and authority to sell and convey the Property to Purchaser. This Agreement constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms.
  - (ii) There are no adverse or other parties in possession of the Property, and Seller has not granted to any person or entity any license, lease or other right relating to the use, management or possession of the Property or any part thereof.
  - (iii) There is no agreement to which Seller is a party or that is binding on Seller which is in conflict with this Agreement. There is no action or proceeding pending or, to Seller's knowledge, threatened against Seller or relating to the Property, which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement or against or with respect to the Property. Seller has not committed or obligated itself in any manner whatsoever to sell, lease or encumber the Property or any interest therein to any other party. No rights of first offer or rights of first refusal regarding the Property exist under the organizational documents of Seller or under any agreement by which Seller or the Property is or may be bound or affected.
  - (iv) To Seller's actual knowledge, the Property has not been the site of any activity that would violate any past or present law or regulation of any governmental body or agency having jurisdiction over the Property relating to Hazardous Materials (hereinafter defined). Specifically, but without limitation, to Seller's actual knowledge, (1) solid waste, petroleum, or petroleum products have not been handled or stored on the Property such that they may have leaked or spilled onto the Property or contaminated the Property, (2) there is no on-site contamination resulting from activities on the Property or adjacent tracts, (3) the Property contains no "Hazardous Materials," (4) there are no storage tanks located on the Property (either above or below ground) and (5) the Property has not been used as a landfill or site for disposal of garbage or refuse. "Hazardous Materials" shall mean any petroleum products, flammables, explosives, radioactive materials, asbestos, radon, or other hazardous waste including substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act, and the Resources Conservation and Recovery Act, and any other similar material or substance whose use, storage, handling or disposal is regulated by any law or regulation. As used in this Section 6 (a)(v), Seller's actual knowledge is limited solely to facts disclosed in any environmental report regarding the Property which has been obtained by

or delivered to Seller, and Seller has made no other investigation or inquiry and has no other knowledge concerning the matters covered in this Section 6(a)(iv).

- (vi) Seller has not received any written notice asserting, nor does Seller have actual knowledge, that the Property fails to comply in all material respects with all applicable laws. To Seller's knowledge, there are no petitions, actions, hearings, planned or contemplated, relating to or affecting the zoning or use of the Property or any contiguous property other than actions and proceedings to plat Seller's contiguous property for use as a single family residential subdivision. To Seller's knowledge, no license, permit or authorization is necessary to own and operate the Property in accordance with its current operations.
- (vii) There is no pending or, to Seller's knowledge, threatened, judicial, municipal or administrative proceedings with respect to, or in any manner affecting the Property or in which Seller is or will be a party.
- (vii) Each of said warranties and representations is true and correct as of the Effective Date and shall be true and correct as of the Closing Date.

(b) If any representation or warranty made by Seller pursuant to this Section is known by Purchaser prior to Closing to be untrue and is not remedied by Seller after ten (10) days written notice from Purchaser prior to Closing (provided that the Closing may be extended as necessary to provide Seller such time to remedy such untrue representation or warranty), Purchaser may, as Purchaser's sole and exclusive remedy, either (i) terminate this Agreement whereupon the Earnest Money shall be refunded to Purchaser, and neither party shall have any further rights or obligations hereunder, except such liabilities and obligations which expressly survive termination of this Agreement, or (ii) waive its objection and close the transaction. Purchaser's failure to give such written notice to Seller of any known misrepresentation shall constitute Purchaser's waiver of any claim based on such misrepresentation. The representations and warranties made by Seller pursuant to this Section shall survive Closing to the limited extent that unless asserted by written notice from Purchaser to Seller within twelve (12) months after the Closing Date, no alleged breach of any of such representations or warranties may form the basis of an action by Purchaser against Seller for

breach of such representation and warranty.

(c) EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION 6, PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES (OTHER THAN THE SPECIAL WARRANTY OF TITLE AS SET OUT IN THE DEED), PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT THEREON, (C) THE COMPLIANCE OF OR BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (D) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (E) COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING THE EXISTENCE IN, ON OR UNDER THE PROPERTY OF HAZARDOUS MATERIALS. ADDITIONALLY, NO PERSON ACTING ON BEHALF OF SELLER IS AUTHORIZED TO MAKE, AND BY EXECUTION HEREOF, PURCHASER ACKNOWLEDGES THAT NO PERSON HAS MADE, ANY REPRESENTATION, AGREEMENT, STATEMENT, WARRANTY,

**GUARANTY OR PROMISE REGARDING THE PROPERTY OR THE TRANSACTION CONTEMPLATED HEREIN; AND NO SUCH REPRESENTATION, WARRANTY, AGREEMENT, GUARANTY, STATEMENT OR PROMISE, IF ANY, MADE BY ANY PERSON ACTING ON BEHALF OF SELLER SHALL BE VALID OR BINDING UPON SELLER UNLESS EXPRESSLY SET FORTH HEREIN. PURCHASER FURTHER ACKNOWLEDGES THAT SELLER HAS ADVISED PURCHASER TO CONSULT WITH ITS OWN PROFESSIONALS AND EXPERTS WITH EXPERIENCE IN EVALUATING THE CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, REGARDING THE PRESENCE OF HAZARDOUS OR TOXIC SUBSTANCES AND THAT PURCHASER WILL BE RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER.**

(d) Purchaser acknowledges that Purchaser shall conduct appropriate environmental and soils tests with respect to the Property and shall rely upon such tests in electing whether or not to purchase the Property. Purchaser hereby releases the Seller, now and forever, from any and all causes of action, claims, demands or liabilities, whether direct or indirect, accruing after the Closing Date and relating to or arising from the existence of toxic or hazardous wastes or materials of any kind on the Property, arising from any use of the Property or arising from the violation of any environmental or similar laws with respect to the Property including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, The Resource Conservation and Recovery Act, The Texas Solid Waste Disposal Act and The Texas Water Code. In addition, Purchaser hereby agrees to indemnify Seller and to hold and defend Seller harmless from and against any and all



causes of action, costs, expenses, damages, liabilities or losses suffered or incurred by Seller as a result of the use, spill, disposal, manufacture, storage or release of any hazardous or toxic wastes, substances, chemicals or materials by Purchaser or by any of Purchaser's agents, contractors, employees, invitees, tenants, successors or assigns on or about the Property, occurring after the Closing Date. The foregoing indemnification shall include, without limitation, (i) attorneys' fees and court costs incurred by Seller in connection with any of the foregoing and (ii) any costs or expenses assessed against or incurred by Seller as a result of any removal or remedial obligations imposed with respect to the Property under any applicable environmental laws.

7. Feasibility Period. Seller agrees that during the period (the "Feasibility Period") commencing on the Effective Date and ending at 5:00 p.m., Friday, October 24, 2008, Purchaser, at its sole cost and risk, shall have the right to go on the Property or any part thereof to inspect the Property and to make all such other inspections, surveys, tests, market or other studies (including environmental) as Purchaser deems necessary or desirable to determine if the Property is suitable for use by Purchaser. If Purchaser shall determine in the exercise of its sole discretion that Purchaser does not desire to purchase the Property for any reason whatsoever, Purchaser shall have the right to terminate this Agreement by written notice to Seller prior to the end of the Feasibility Period. In such event, the Earnest Money shall forthwith be returned to Purchaser free and clear of all rights and claims of Seller with respect thereto, and neither party hereto shall have any further liability or obligation hereunder, except such liabilities and obligations which expressly survive termination of this Agreement. Purchaser shall keep confidential the results of any tests and inspections made by Purchaser and shall not disclose such results to any third parties other than its employees, agents, attorneys and other consultants. Purchaser will (i) indemnify, defend and hold Seller harmless from and against any and all claims, damages, losses, costs, liabilities and expenses

(including court costs and reasonable attorneys' fees) asserted against or incurred by Seller and (ii) repair any damages to the Property caused by or resulting from such tests, surveys, inspections and studies; provided, however, the indemnity shall not extend to (a) protect Seller from any pre-existing liabilities for matters merely discovered by Purchaser (i.e., latent environmental contamination) or (b) any liens, claims, causes of action, damages, liabilities, or expenses that are attributable to the action or inaction of Seller or its agents or employees. At Seller's option, Purchaser shall reimburse Seller for all reasonable expenses incurred by Seller in repairing such damages if Purchaser does not promptly repair such damages after written notice of such damages has been delivered by Seller to Purchaser. The foregoing agreement of indemnity, repair and reimbursement shall survive any termination of this Agreement. Purchaser acknowledges and agrees that Seller is not making any representation or warranty regarding the truth or accuracy of any material or information furnished to Purchaser by or on behalf of Seller, and that Seller has advised Purchaser to independently conduct such appraisals, tests, studies and inspections as Purchaser deems necessary.

8. Closing.

(a) The closing hereunder shall take place at the office of the Title Company on October 31, 2008, or at such other time or place as shall be mutually agreed upon by the parties in writing. References in this Agreement to the "Closing" or the "Closing Date" shall mean said time and place.

(b) At the Closing, Seller shall deliver in escrow to the Title Company the following:

- (i) a duly executed Special Warranty Deed in recordable form conveying the Property to Purchaser free and clear of any liens or encumbrances except the Permitted Encumbrances;
- (ii) evidence of existence, organization and authority of Seller and the authority of the person executing documents on behalf of Seller reasonably satisfactory to Purchaser and the Title Company;

- (iii) an affidavit as to Seller's non-foreign status as permitted by Section 1445(b)(2) of the Internal Revenue Code, as amended;
  - (iv) such other documents as the Title Company may require in order to issue the Title Policy.
- (c) At the Closing, Purchaser shall deliver in escrow to the Title Company the following:
  - (i) the Purchase Price; and
  - (ii) such other documents as the Title Company reasonably requires in the consummation of this transaction.
- (d) On the Closing Date, Seller and Purchaser shall deposit with the Title Company executed closing statements consistent with this Agreement in form required by the Title Company. The Title Company's escrow fee shall be divided equally between and paid by Seller and Purchaser.
- (e) At the Closing, Seller shall cause the Title Company to deliver to Purchaser the Title Policy.
- (f) Seller shall deliver possession of the Property to Purchaser at the Closing, subject only to the Permitted Encumbrances.
- (g) Upon satisfaction or completion of the foregoing conditions and deliveries, and in accordance with written instructions to the Title Company by Purchaser and/or Seller (not inconsistent with this Agreement), the Title Company shall immediately record and deliver the documents in this Section 8 above to the appropriate parties and make disbursements according to the closing statements executed by Seller and Purchaser.
- (h) All state, county, and municipal taxes for the then current year relating to the Property shall be calculated as of the Closing Date and Seller's share shall be collected by Title Company at the Closing and remitted to the appropriate taxing jurisdictions in accordance with Section 26.11 of the Texas Property Tax Code. If there is any rollback tax liability for the Real

Property that is triggered by the actions of the Seller prior to the Closing Date only, the Seller will assume the responsibility for those taxes. Purchaser does not waive any exemption or other exception it, or the Property, may have from rollback taxes pursuant to Texas Property Tax Code §23.55(f) or other applicable law.

9. Seller's Default. In the event that sale of the Property hereunder is not consummated by reason of Seller's failure to perform all obligations and conditions to be performed by Seller under this Agreement, Purchaser may, at its option and as its sole and exclusive remedies, either terminate this Agreement by written notice to Seller or enforce specific performance of this Agreement. If this Agreement is terminated by Purchaser pursuant to any right of termination given to Purchaser herein, the Earnest Money shall promptly be refunded to Purchaser.

10. Purchaser's Default. In the event that sale of the Property hereunder is not consummated by reason of Purchaser's breach or other failure to perform all obligations and conditions to be performed by Purchaser under this Agreement, the Seller shall have the right to retain the Earnest Money as liquidated damages for the breach of this Agreement as Seller's sole and exclusive remedy, such sum to be retained by Seller is the amount of damages that both Seller and Purchaser agree that Seller would sustain by reason of any default by Purchaser, as the amount of actual damages sustained by Seller would be difficult or impractical to determine.

11. Commission. Seller and Purchaser covenant and agree one with the other that no real estate commissions, finders' fees or brokers' fees have been or will be incurred in connection with this Agreement or the sale contemplated hereby. Seller and Purchaser shall indemnify, defend and hold each other harmless from and against any claims, liabilities, obligations or damages for commissions, finders' or brokers' fees resulting from or arising out of Purchaser's purchase of the Property hereunder asserted against either party by any broker or other person claiming by, through

or under the indemnifying party or whose claim is based on the indemnifying party's acts or omissions.

12. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed to be delivered when actually received if personally delivered, when sent by telefacsimile properly addressed and machine generated confirmation of receipt is received or upon deposit with a recognized overnight courier service or in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, as follows:

If to Seller:

c/o Hanover Property Company  
5950 Berkshire Lane, Suite 1200  
Dallas, Texas 75225  
Attention: Michael N. Maberry  
Telephone No: 214-445-2206  
Fax No: 214-368-7985

With a copy to:

Locke Lord Bissell & Liddell LLP  
2200 Ross Avenue, Suite 2200  
Dallas, Texas 75201  
Attention: Robert J. Banta  
Telephone No.: 214-740-8000  
Fax No: 214-740-8800

If to Purchaser:

City of Frisco  
6101 Frisco Square Boulevard  
Frisco, Texas 75034  
Attention: George Purefoy, City Manager  
Telephone No.: 972-292-5105  
Fax No.: 972-335-5559

With a copy to:

Abernathy, Roeder, Boyd & Joplin, P.C.  
1700 Redbud Blvd., Suite 300  
McKinney, Texas 75069  
Attention: Randy Hullett  
Telephone No.: 972-544-4000  
Fax No.: 972-544-4044

Either party hereto may change the address for notice specified above by giving the other party three (3) days advance written notice of such change of address.

13. Condemnation. If any material part of the Property is condemned, or if prior to the Closing, condemnation proceedings are threatened or commenced against any material part of the Property, then Seller shall give written notice thereof to Purchaser, and Purchaser may elect to terminate this Agreement by written notice to Seller within fifteen (15) days after receipt of Seller's notice, whereupon the Earnest Money shall be returned to Purchaser, and neither Purchaser nor Seller shall have any further liability or obligation hereunder, except such liabilities or obligations which expressly survive termination of this Agreement. If Purchaser does not so terminate the Agreement, the obligations of the parties hereto shall not be affected, and Seller shall assign to Purchaser (or pay to Purchaser if such proceeds have been collected), at the Closing, all condemnation proceeds payable as the result of such proceedings. For purposes of this Section, more than ten percent (10%) of the area of the Property or any portion which materially and adversely affects access to the Property shall constitute a "material" part of the Property.

14. Miscellaneous.

(a) 1031 Exchange. Seller may seek to convey the Property to Purchaser (at Seller's sole option) in connection with an exchange for like-kind property (a so called tax-free exchange) qualifying for tax free treatment pursuant to United States Internal Revenue Code Section 1031. Purchaser agrees in any such event to reasonably cooperate with Seller in effectuating a qualifying like-kind exchange (whether through a qualified intermediary, trust, partnership or other means as determined by Seller) so long as the Purchase Price to be paid and all costs to be incurred by Purchaser remain the same (without any increase whatsoever) under this Contract absent such like-kind exchange, and so long as Seller bears all additional transaction costs attributable to the

execution and effectuation of such qualifying like-kind exchange.

(b) Construction and Interpretation. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas.

(c) Amendment and Waiver. This Agreement may not be modified or amended, except by an agreement in writing signed by Seller and Purchaser. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such condition or obligation.

(d) Power to Execute. Each person executing this Agreement warrants and represents that he is fully authorized to do so.

(e) Assignment. Purchaser may not assign its rights under this Agreement without the prior written consent of Seller.

(f) Binding Terms. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their legal representatives, successors and assigns.

(g) Entire Agreement. This Agreement, (including any exhibits and/or addenda hereto), constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No covenant, representation or condition which is not expressed herein shall be binding upon the parties hereto or shall affect or be effective to interpret, change or restrict the provisions of this Agreement.

(h) Acknowledgement of Cancellation. Upon a termination or cancellation of this Agreement, both parties covenant and agree to execute such documents as either party may

reasonably request to evidence such termination.

(i) Time. Time shall be of the essence with respect to the performance of this Agreement. In computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included, and the last day of the period so computed is to be included. If the end of any period or any date for performance of an obligation hereunder falls on a day which is not a Business Day, the end of such period or the date for performance will be extended to the next Business Day. As used herein, a "Business Day" shall mean any day other than a Saturday, Sunday or a day on which banks are required or permitted to close in Texas.

(j) Attorneys' Fees. In the event it becomes necessary for either party to institute legal proceedings to enforce this Agreement or any provision contained herein, the party prevailing in such action shall be entitled to receive, in addition to all other remedies or damages, reasonable attorneys' fees incurred in such proceedings.

(k) Effective Date. The "Effective Date" shall be the date the Title Company signs the Agreement acknowledging receipt of the Earnest Money.

(l) Counterparts. This Agreement may be executed in two or more identical counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument.

15. Road Construction. In conjunction with development of a single family residential subdivision on its property adjacent to the Property, Seller will construct neighborhood streets, some of which will terminate at and provide access to the Property. Prior to construction of the neighborhood streets, the Seller shall provide access to the Property via a temporary easement from a public right of way in such location as may be mutually acceptable to the parties.



16. Bridge and Trail Construction. Subsequent to Closing, the Seller agrees to construct a pedestrian bridge (the "Bridge") on the Property in the location and according to the plans and specification attached to this Contract as Exhibit B. The projected cost for the pedestrian bridges is \$185,495.00 as shown in the preliminary cost projection attached hereto as Exhibit B-1. The Purchaser shall be responsible for fifty percent (50%) of the cost for the Bridge, which shall be paid to Seller in the form of park fee credits for Seller's adjoining residential development. Seller further agrees to dedicate easements for the ends of the Bridge to be connected to the nearest public right of way or city park. The Seller shall construct the trails connecting the Bridge to the public right of way or city park in the location and according to plans and specifications approved by the parties prior to construction. The projected cost for the trail improvements is \$42,702.00 as shown in the preliminary cost projection attached hereto as Exhibit B-2. The Purchaser shall be responsible for all of the costs for the trail improvements, which shall be paid to Seller in the form of park fee credits for Seller's adjoining residential development. The Bridge and trail improvements shall be completed by Seller at the time the first phase of infrastructure improvements are completed in Seller's adjoining subdivision. }

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AT CLOSING, AN INSTRUMENT EXECUTED BY PURCHASER AND SELLER SHALL BE RECORDED IN THE REAL PROPERTY RECORDS OF COLLIN COUNTY, TEXAS PROVIDING THAT THE PROVISIONS OF THIS SECTION 16 WILL SURVIVE CLOSING, BE BINDING ON AND INURE TO THE BENEFIT OF PURCHASER AND SELLER AND THE PROPERTY AND RUN WITH THE LAND.

*mm*

Executed by Purchaser this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**PURCHASER:**

THE CITY OF FRISCO, TEXAS,  
a municipal corporation organized under the  
laws of the State of Texas

By: \_\_\_\_\_  
George Purefoy, Manager

Executed by Seller this 14th day of October, 2008.

**SELLER:**

HILLCREST 306 PARTNERS, L.P.,  
a Texas limited partnership

By: HPC Hillcrest 306 GP Partners, Ltd.,  
a Texas limited partnership,  
its general partner

By: Hanover Services Group, Inc.,  
a Texas corporation,  
its general partner

By: Michael N. Maberry  
Name: Michael N. Maberry  
Title: President

This Agreement together with Purchaser's Earnest Money has been received by the undersigned this \_\_\_\_\_ day of \_\_\_\_\_, 2008 (the "Effective Date").

REPUBLIC TITLE OF TEXAS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBITS:**

Exhibit A - Description of Property

Exhibit B - Plans

Exhibit B-1 - Preliminary Cost Projection for Pedestrian Bridge

Exhibit B-2 - Preliminary Cost Projection for Trail Improvements

**EXHIBIT A**  
**DESCRIPTION OF PROPERTY**

### **METES & BOUNDS DESCRIPTION**

**BEING** a 6.104 acre tract of land located in the Collin County School Land Survey, Abstract No. 155, in the City of Frisco, Collin County, Texas, being a portion of a called 59.925 acre tract of land as described in the Special Warranty Deed with Vendor's Lien to Hillcrest 306 Partners, L.P., filed for record in County Clerk's Instrument No. 20060808001130870, Deed Records, Collin County, Texas, said 6.104 acre tract of land being more particularly described by metes and bounds as follows:

**COMMENCING** at a 1/2 inch iron rod found (controlling monument) for the northeast corner of said called 59.925 acre tract of land, same being the northwest corner of a called 21.569 acre tract of land as described in the Special Warranty Deed with Vendor's Lien to Hillcrest 306 Partners, L.P., filed for record in County Clerk's Instrument No. 20060808001130880, of said Deed Records, and being on the south line of a called 160.7 acre tract of land as described in the Special Warranty Deed to Rock Hill Enterprises, L.P., filed for a record in County Clerk's Instrument No. 20070130000135950, of said Deed Records;

**THENCE** North 89 degrees 57 minutes 31 seconds West, along the north line of said called 59.925 acre tract of land, common to the south line of said called 160.7 acre tract of land, a distance of 224.57 feet, to a 5/8 inch capped iron rod set stamped "Mycoskie McInnis" for the **POINT OF BEGINNING**;

**THENCE** Southerly, departing said common line, and over and across said called 59.925 acre tract of land, the following calls:

South 21 degrees 44 minutes 12 seconds West, a distance of 126.14 feet, to a 5/8 inch capped iron rod set stamped "Mycoskie McInnis";

South 04 degrees 02 minutes 54 seconds West, a distance of 278.50 feet, to a 5/8 inch capped iron rod set stamped "Mycoskie McInnis";

South 57 degrees 01 minutes 49 seconds West, a distance of 199.55 feet, to a 5/8 inch capped iron rod set stamped "Mycoskie McInnis";

South 80 degrees 34 minutes 28 seconds West, a distance of 64.29 feet, to a 5/8 inch capped iron rod set stamped "Mycoskie McInnis";

South 51 degrees 14 minutes 55 seconds West, a distance of 151.80 feet, to a 5/8 inch capped iron rod set stamped "Mycoskie McInnis";

South 10 degrees 54 minutes 28 seconds West, a distance of 86.67 feet, to a 5/8 inch capped iron rod set stamped "Mycoskie McInnis";

South 31 degrees 59 minutes 38 seconds East, a distance of 97.49 feet, to a 5/8 inch capped iron rod set stamped "Mycoskie McInnis";

North 89 degrees 57 minutes 31 seconds West, a distance of 120.93 feet, to a 5/8 inch capped iron rod set stamped "Mycoskie McInnis" for the southwest corner of the herein described tract of land, same being the southeast corner of a called 8.998 acre tract of land as described in the Special Warranty Deed to Prosper Independent School District, filed for record in County Clerk's Instrument No. 20080220000199970, of said Deed Records;

**THENCE** North 00 degrees 02 minutes 29 seconds East, along the east line of said called 8.998 acre tract of land, a distance of 577.83 feet, to a 5/8 inch capped iron rod set stamped "Mycoskie McInnis" at the beginning of a non-tangent curve to the right having a radius of 55.00 feet;

**THENCE** along said non-tangent curve to the right, and in a northwesterly direction, through a central angle of 03 degrees 37 minutes 01 seconds, an arc length of 3.47 feet, and having a long chord which bears North 67 degrees 08 minutes 49 seconds West, a chord length of 3.47 feet, to a 5/8 inch capped iron rod set stamped "Mycoskie McInnis";

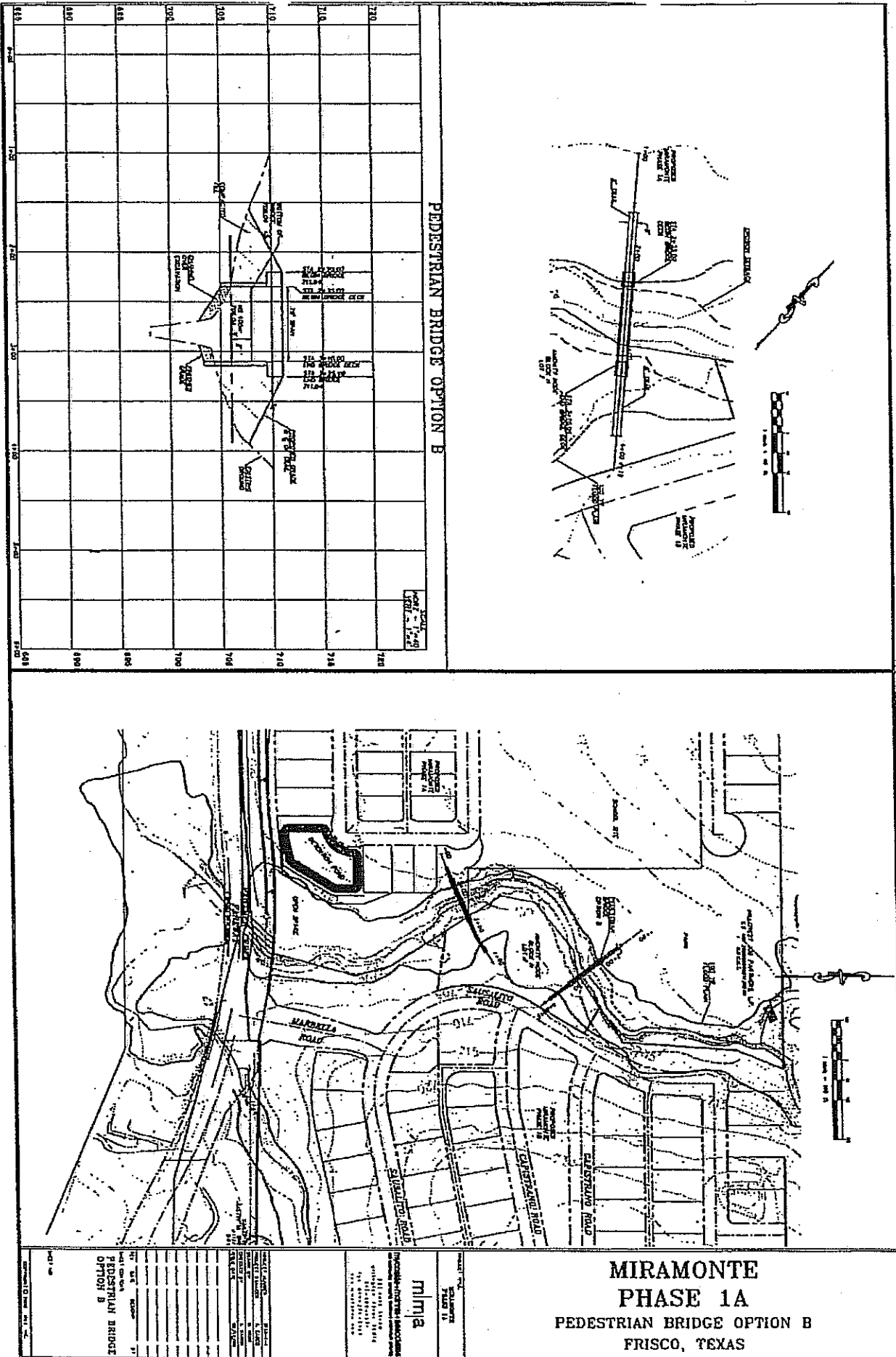
**THENCE** North 89 degrees 57 minutes 31 seconds West, along the north line of said called 8.998 acre tract of land, a distance of 82.28 feet, to a 5/8 inch capped iron rod set stamped "Mycoskie McInnis" at the beginning of a non-tangent curve to the left having a radius of 55.00 feet;

**THENCE** along said non-tangent curve to the left, and in a northeasterly direction, through a central angle of 264 degrees 44 minutes 33 seconds, an arc length of 254.13 feet, and having a long chord which bears North 42 degrees 22 minutes 17 seconds West, a chord length of 81.27 feet, to a 5/8 inch capped iron rod set stamped "Mycoskie McInnis";

**THENCE** North 00 degrees 02 minutes 29 seconds East, a distance of 138.00 feet, to a 5/8 inch capped iron rod set stamped "Mycoskie McInnis" on the north line of said called 59.925 acre tract of land, common to the south line of said called 160.7 acre tract of land;

**THENCE** South 89 degrees 57 minutes 31 seconds East, along said common line, a distance of 641.00 feet to the **POINT OF BEGINNING** and containing 6.104 acres (265,893 square feet) of land.

## EXHIBIT B



# EXHIBIT B-1 Page 1 of 3

Preliminary Cost Projection for  
Hanover Property - Miramonte 323 Acre Tract  
Frisco, Texas

MESA

Project #26235

September 16, 2008

## Miramonte

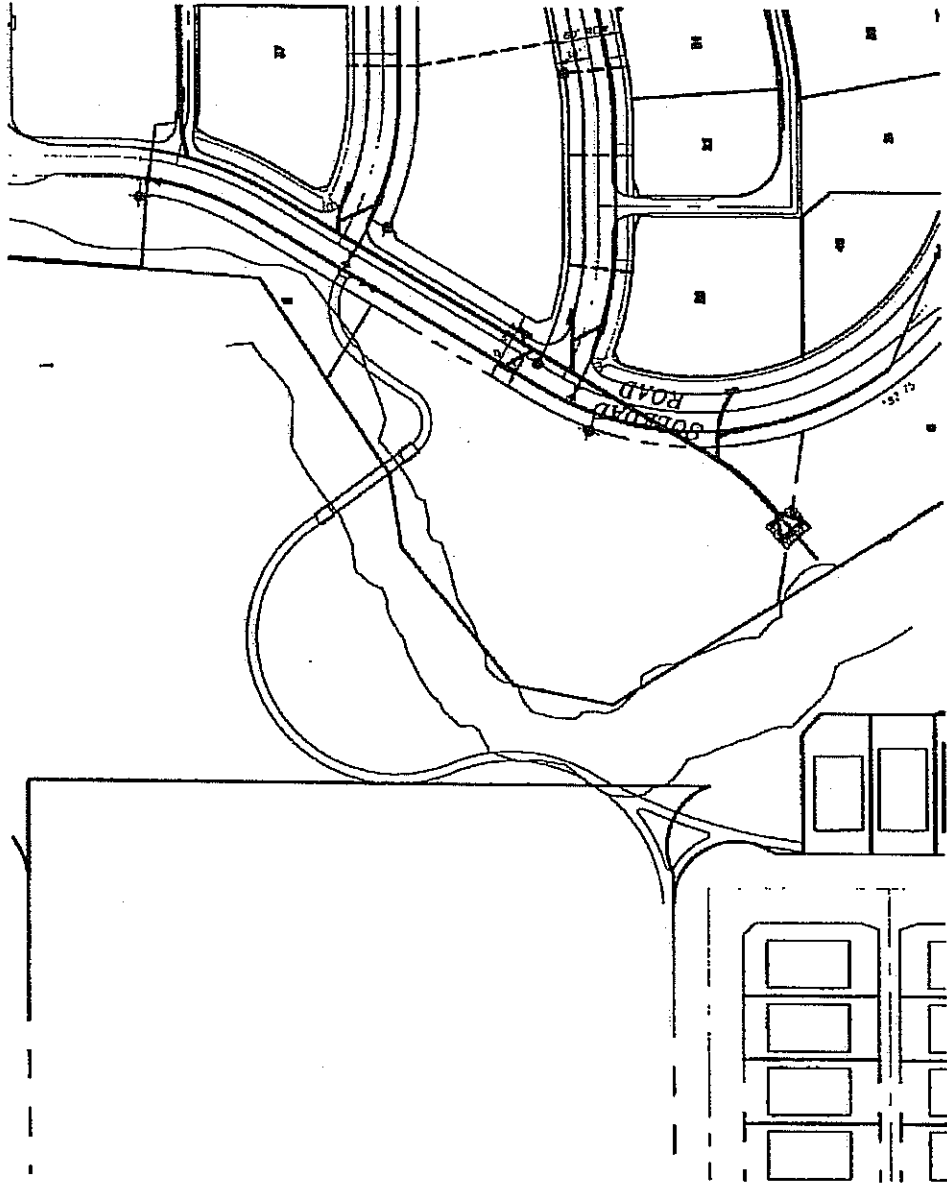
Project Cost Summary	
<b>PHASE I - Pedestrian Bridge</b>	
Pedestrian Bridge	
Handscape Total with deducts	\$143,350.00
Landscape Total with deducts	\$0.00
<b>PEDESTRIAN BRIDGE TOTAL W/ DEDUCTS</b>	<b>\$143,350.00</b>
Phase I Pedestrian Bridge Handscape Total with Deducts	\$143,350.00
Phase I Pedestrian Bridge Landscape Total with Deducts	\$0.00
<b>Phase I Pedestrian Bridge- Project Total for Construction with Deducts</b>	<b>\$143,350.00</b>
<b>Soft Costs</b>	
Total Projected A/E Design Fees (9.9% Construction Costs)	\$14,191.65
Inflationary Allowance (6% construction cost for 1 year) (Est. at .5% Per month annu/m)	\$8,601.00
Construction Contingency (10% construction cost)	\$14,335.00
CA/CO fees - (Mike Konold - Mesa #)	\$5,017.25
<b>Total Soft Costs</b>	<b>\$42,144.90</b>
<b>PHASE I PEDESTRIAN BRIDGE - PROJECT GRAND TOTAL</b>	<b>\$185,494.90</b>

Note: This cost projection does not reflect cost of reimburseables, building permits, TDR submitted, civil engineering, substantial cost, or unsubmitted impact fees. All unit prices, allowances and inlets are valid for thirty (30) days. MESA Design Group reserves the right to revise this projection after such time.



# EXHIBIT B-1 Page 2 of 3

DESCRIPTION	QTY.	UNIT	COST	SUBTOTAL	DEDUCT QTY.	DEDUCT COST	REALIZED DEDUCTION
Phase I Pedestrian Bridge							
Hardscape Elements							
Pedestrian Bridge	1	lin	\$54,100.00	\$54,100.00			
Bridge Abutments	1	lin	\$25,000.00	\$25,000.00			
Concrete Bridge Deck (8' Wide)	75	lf	\$30.00	\$2,250.00			
Bridge Contractor	1	lin	\$40,000.00	\$40,000.00			
Hardscape Subtotal				\$143,350.00			
Hardscape Deductions						\$0.00	
Hardscape Total with deducts				\$143,350.00			
Landscape Elements							
Landscape Subtotal				\$0.00		\$0.00	
Landscape Deductions						\$0.00	
Landscape Total with deducts				\$0.00			
Phase I Pedestrian Bridge SUBTOTAL				\$143,350.00			
Phase I Pedestrian Bridge DEDUCTIONS						\$0.00	
PHASE I PEDESTRIAN BRIDGE TOTAL W/ DEDUCTIONS				\$143,350.00			



MESA

**MIRAMONTE**

1871 Regal Avenue, Suite 110  
 Dallas, TX 75201  
 214.771.6544  
 Fax: 214.771.1443

CONCEPTUAL\_PED\_BRIDGE

Drawn	09/10/04
Reviewed	
Checked	02/20
Scale	1"=100' 0"

# EXHIBIT B-2

## Page 1 of 2

Preliminary Cost Projection for  
Hanover Property - Miramonte 323 Acre Tract  
Frisco, Texas

MESA

Project #262335

September 16, 2008

### Miramonte

Project Cost Summary	
<b>PHASE I - Trail</b>	
Phase I Trail	
Hardscape Total with deducts	\$33,000.00
Landscape Total with deducts	\$0.00
<b>PEDESTRIAN BRIDGE TOTAL W/ DEDUCTS</b>	
Phase I Trail Hardscape Total with Deducts	\$33,000.00
Phase I Trail Landscape Total with deducts	\$0.00
<b>Phase I Trail - Project Total for Construction with Deducts</b>	<b>\$33,000.00</b>
<b>Soft Costs</b>	
Total Projected A/E Design Fees (9.9% Construction Costs)	\$3,267.00
Inflationary Allowance (6% construction cost for 1 year) (Est. at .5% Per month annum)	\$1,980.00
Construction Contingency (10% construction cost)	\$3,300.00
CA/CO fees - (Mike Konald - Mesa #)	\$1,155.00
<b>Total Soft Costs</b>	<b>\$9,702.00</b>
<b>PHASE I TRAIL - PROJECT GRAND TOTAL</b>	<b>\$42,702.00</b>

Note: This cost projection does not reflect cost of reimburseables, building permits, TMA submitted, civil engineering, submitted costs, or associated impact fees. All unit prices, allowances and total costs are valid for 30 days. MESA Design Group reserves the right to revise this projection after such time.

**EXHIBIT B-2**  
Page 2 of 2

DESCRIPTION	QTY.	UNIT COST	COST	SUBTOTAL	DEDUCT QTY.	DEDUCT COST	ITEMIZED DEDUCTION
<b>Phase I Trail</b>							
<b>Hardscape Elements</b>							
8" Concrete Trail	1,100 lf	\$30.00	\$33,000.00			\$0.00	
<b>Hardscape Subtotal</b>				\$33,000.00			
<b>Hardscape Deductions</b>						\$0.00	
<b>Hardscape Total with deducts</b>				\$33,000.00			
<b>Landscape Elements</b>							
<b>Landscape Subtotal</b>			\$0.00	\$0.00		\$0.00	
<b>Landscape Deductions</b>						\$0.00	
<b>Landscape Total with deducts</b>				\$0.00			
<b>Phase I Trail SUBTOTAL</b>				\$33,000.00		\$0.00	
<b>Phase I Trail DEDUCTIONS</b>						\$0.00	
<b>PHASE I TRAIL TOTAL W/ DEDUCTIONS</b>				\$33,000.00			